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ARIZONA CORPORATION COMMISSION

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RE: Docket Nos. RE-00000A-18-0405; E-03964A-06-0168; E-03869A-06-0470; E-20466A-06-0488; E-20545A-07-0464; E-20841A-12-0115; E-20852A-12-0269; E-20865A-12-0442; E-20868A-12-0486; E-20884A-13-0126; E-20887A-13-0232; and E-21160A-21-0279.

My Fellow Commissioners,

I reviewed the letter from Commissioner Justin Olson sent on September 27, 2021, requesting that the matter of Green Mountain Energy's application for a certificate of convenience and necessity ("CC&N") for competitive retail electric service be placed on the September 30, 2021, Staff Meeting agenda. In his letter, Commissioner Olson states the purpose for the item is to receive an update from the Utilities Division ("Staff") and Hearing Division regarding the application's status and, if necessary, to vote to ensure that the application will move forward. In addition, the letter requests the matter of the Attorney General opinion ("AG Opinion") be placed on the next Staff Meeting to "confirm whether this request for an Opinion will delay the processing of Green Mountain Energy's application."

I agree the Commission should not delay the timely processing of any application that is legally filed under administrative rules that the Commission has the proper authority to use taxpayer time and resources to implement and enforce, or that could help the Commission achieve noteworthy public policy objectives when the potential costs and risks have been fully vetted by the Commission. However, I believe the Commission should, at a minimum, give the Legal Division an opportunity to draft the letter we requested, before we proceed with any additional Staff updates or votes.

In addition, it has come to my attention that several applications for CC&Ns for the provision of retail electric service are currently pending under the Commission's Retail Electric Competition Rules (eleven in total). They are listed below in the order in which they were filed:

- Docket No. [E-03964A-06-0168](#) (Sempra Energy Solutions)
- Docket No. [E-03869A-06-0470](#) (PDM Energy LLC)
- Docket No. [E-20466A-06-0488](#) (Applied Metering Technologies, Inc.)
- Docket No. [E-20545A-07-0464](#) (MeterSmart, LP)
- Docket No. [E-20841A-12-0115](#) (Constellation NewEnergy, Inc.)
- Docket No. [E-20852A-12-0269](#) (Energy Professionals, LLC)
- Docket No. [E-20865A-12-0442](#) (EMEX, LLC)
- Docket No. [E-20868A-12-0486](#) (Incite Energy, LLC)
- Docket No. [E-20884A-13-0126](#) (Direct Energy Services, LLC)
- Docket No. [E-20887A-13-0232](#) (Energy Me Midwest LLC)
- Docket No. [E-21160A-21-0279](#) (Green Mountain Energy)

Based on my understanding of the dockets, the Commission has not acted on any of the pending applications above, except one.

Providing notice and an opportunity to be heard is paramount to ensuring equal protection of the laws and upholding due process of law. As Chair, it would be valuable for me to receive an update from Staff regarding the status of all of the applications that have been pending before the Commission and whether the applicants are still interested in prosecuting their respective applications.

Lastly, I am aware that the Legislature established two regulatory paths for the approval of CC&Ns, one under a non-competitive monopoly path and the other under a competitive path. I am aware that of the eleven applications that have currently been pending at the Commission, Green Mountain Energy's application may be the only application that was filed under both regulatory paths. While this itself may raise questions about the propriety of the

application or its “administrative completeness” under either path, there are no outstanding legal questions surrounding the implementation or enforceability of the Commission’s non-competitive CC&N rules as there for the Commission’s Retail Electric Competition Rules. Although the non-competitive CC&N path may not be appropriate for this applicant, I believe Green Mountain Energy as the applicant has the right to pursue that path, if it so chooses and is willing to comply with the administrative rules set forth under that regime. Thus, to the extent that Green Mountain Energy would like to proceed with the portion of its application pertaining to the Legislature’s non-competitive CC&N path, I believe it would be appropriate to hear from Staff and the Hearing Division whether, how, and when they expect to pick up, review, process, and schedule the respective application under the Commission’s rules for provision of non-competitive retail electric services.

On the Staff Open Meeting on October 27, 2021, I plan to place the following items on the agenda:

- **Arizona Corporation Commission - Attorney General Opinion** - Commission discussion, consideration, and possible vote to approve and send, as a Commission, a letter prepared by the Legal Division requesting pursuant to A.R.S. § 41-193(A)(7) an Attorney General Opinion regarding the statutes the Legislature established in A.R.S. § 40-202(B), (C), (D), and (E) and §§ 40- 207–208 and the status of A.A.C. § R14-2-1601 *et seq.* in light of Arizona Constitution, article XV, §§ 3, 6, 12, & 14, [Phelps Dodge Corp. v. Arizona Elec. Power Co-op., Inc.](#), 207 Ariz. 95 (Ct. App. 2004), and [Johnson Utilities, L.L.C. v. Arizona Corp. Comm'n](#), 249 Ariz. 215 (2020). The Commission may vote to go into Executive Session for discussion and consultation with its attorneys in this matter pursuant to A.R.S. § 38-431.03A (3) and (4), which will not be open to the public.
- **Arizona Corporation Commission – Applications for Certificates of Convenience and Necessity for the Provision of Competitive Retail Electric Services** - Commission discussion, consideration, and possible vote, and update from the Commission’s Utilities Division (“Staff”) and Hearing Division regarding the status, process, and priority for processing the applications for certificates of convenience and necessity for the provision of competitive retail electric services pending in Docket Nos. [E-03964A-06-0168](#) (Sempra Energy Solutions), [E-03869A-06-0470](#) (PDM Energy LLC), [E-20466A-06-0488](#) (Applied Metering Technologies, Inc.), [E-20545A-07-0464](#) (MeterSmart, LP), [E-020841A-12-0115](#) (Constellation NewEnergy, Inc.), [E-20852A-12-0269](#) (Energy Professionals, LLC), [E-20865A-12-0442](#) (EMEX, LLC), [E-20868A-12-0486](#) (Incite Energy, LLC), [E-20884A-13-0126](#) (Direct Energy Services, LLC), [E-20887A-13-0232](#) (Energy Me Midwest LLC), and [E-21160A-21-0279](#) (Green Mountain Energy). The Commission may direct Staff to provide notice and due process by requesting that each applicant confirm or deny in writing their intent to continue prosecuting the respective application or withdraw and have the docket administratively closed. The Commission may vote to go into Executive Session for discussion and consultation with its attorneys in this matter pursuant to A.R.S. § 38-431.03A (3) and (4), which will not be open to the public.
- **Arizona Corporation Commission – Application from Green Mountain Energy for a Certificate of Convenience and Necessity Filed under the Commission’s Rules for Non-Competitive Provision of Retail Electric Service (E-21160A-21-0279)** - Commission discussion, consideration, and possible vote, and update from the Commission’s Utilities Division (“Staff”) and Hearing Division regarding the status, process, and priority for processing the portion of Green Mountain Energy’s application for certificate of convenience and necessity filed under the Commission’s rules for provision of non-competitive retail electric services. The Commission may vote to go into Executive Session for discussion and consultation with its attorneys in this matter pursuant to A.R.S. § 38-431.03A (3) and (4), which will not be open to the public.

I look forward to the discussion at that time.

Thank you,

Lea Márquez Peterson
Chairwoman

